IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-6-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRP NPD No.1310 of 2006
and
M.P.No.1 of 2006

Marudhachalam .. Petitioner/2nd defendant

vs

Ammulu .. Respondent/Proposed Party

Civil revision petition preferred under Sec.115 of the Code of Civil Procedure against the fair and decretal order dated 22.3.2006 made in I.A.No.533 of 2005 in O.S.No.657 of 1989 on the file of the II Additional Sub Court, Coimbatore.

For Petitioner : Mr.N.Manokaran

For Respondent : M/s.Sarvabhauman Associates

ORDER

Challenge is made to an order of the II Additional Subordinate Judge, Coimbatore, made in I.A.No.533 of 2005 in O.S.No.657 of 1989.

2.The Court heard the learned Counsel for the petitioner/second defendant and also the learned Counsel for the respondent-proposed party.

3.It was a suit for partition filed in O.S.No.657 of 1989 by the son of the proposed party. The petitioner herein is the second defendant, who purchased the property on 23.8.1972. The relief of partition was sought for by the son against the father-the first defendant, and the purchaser-the second defendant. The suit was dismissed for default on 4.7.1996. I.A.No.1286/96 was filed to condone the delay of 107 days in filing an application to restore the suit, and the same was allowed on 8.11.1996. After that application was allowed, I.A.No.1173/97 was filed for restoration of the suit. But, pending that application, the sole plaintiff died on 7.8.1998. Following the same, the said application was

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dismissed for default on 10.4.2001. The mother of the plaintiff, who is the proposed party-the respondent herein, filed the instant application in I.A.No.533 of 2005 to condone the delay of 2944 days in bringing her on record. An enquiry was made. After contest, the application was allowed but with a cost of Rs.1,000/-. The amount has also been deposited before the lower Court. Now, at this juncture, the revision has been brought forth by the petitioner aggrieved over the said order.

4.The main contention put forth by the learned Counsel for the petitioner is twofold. Firstly, there was no sufficient reason to condone such a huge delay of 2944 days. Secondly, the application was filed to condone the delay in filing an application for impleading the petitioner as a party to the proceedings.

5.The learned Counsel would further add that so far as the abatement is concerned, no application has been filed to set aside the order; that apart from that, the order in I.A.No.1173/97 which was dismissed for default, is also in force; that under the circumstances, without making those applications, the impugned order will not hold good; that without considering the same, the lower Court has passed the order, and hence, it has got to be set aside.

6.In answer to the above, it is contended by the respondent-proposed party that it is true that there was a huge delay; but, the respondent-third party in the course of the affidavit in support of the application in I.A.No.533 of 2005, made the reason as to how the delay was caused; that the lower Court was convinced with sufficiency of reasons and has allowed the application; that now only, an application to implead her as party to the proceedings, an application for setting aside the abatement and also applications for restoration of I.A.No.1173/97 and also the suit all would arise; that they are all consequential applications to be filed; that on that ground, I.A.No.533/2005 cannot be found to be defective, and under the circumstances, the order of the lower Court has got to be sustained.

7.After careful consideration of the submissions made, this Court is of the considered opinion that the order of the lower Court has got to be sustained since the revision does not carry any merit whatsoever. It was a suit for partition filed in the year 1989, and the same was originally dismissed for default. An application was also filed to condone the delay of 107 days in filing an application to restore the same. That application was also allowed, and thereafter, I.A.No.1173/97 was filed to restore the suit. Pending that application, the sole plaintiff died. The proposed party-the mother of the plaintiff filed the instant application in I.A.No.533/2005 to condone the delay of 2944 days in filing an application to implead her. The lower Court in view of the sufficiency of reasons, has allowed the application. Once that application was filed to condone the delay that was caused in making her to implead as party and allowed, only after her being impleaded as party, she can come into the picture and take all necessary steps. Now, at this juncture, the filing of the other applications for setting aside the abatement and also restoration of I.A.No.1173/97 and the suit would be nothing but

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consequential. Under the circumstances, the contentions put forth by the learned Counsel for the petitioner do not merit acceptance. Accordingly, they are rejected, and this civil revision petition is dismissed. No costs. Consequently, connected MP is also dismissed.

nsv/

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

The II Additional Sub Court
Coimbatore

+1 cc to Mr.N.Manokaran, Advocate Sr.No.34890.

+1 cc to M/s.Sarvabhauman Associates,Sr.No.35053.

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